

Private foundations; administration; disqualified persons. Employees of a bank designated as the trustee of a private foundation, who have been delegated fiduciary responsibility for the day-to-day administration and distribution of the trust funds, are foundation managers within the meaning of section 4946(b)(1) of the Code and are disqualified persons as defined in section 4946(a)(1)(B) even though they are ultimately responsible to the bank directors and officers for their actions with respect to the trust.

Advice has been requested whether the persons described below are disqualified persons within the meaning of section 4946 of the Internal Revenue Code of 1954 with respect to a private foundation described in section 509(a).

The private foundation is a trust that conducts a loan scholarship program which meets the requirements of section 4945(g) of the Code. The designated trustee is a bank. However, fiduciary responsibility for the day-to-day administration of the trust, including distribution of the trust funds, is delegated to certain bank employees who are ultimately responsible to bank directors and officers for their actions. Under the terms of the trust agreement, it is conceivable that the children of these employees might be recipients of scholarship aid, resulting in an act of self-dealing under section 4941 should the employees be disqualified persons.

Section 4946(a)(1)(B) of the Code provides that the term 'disqualified person' includes a person who is a foundation manager.

Section 4946(b)(1) of the Code and 53.4946-1(f)(1) of the Foundation Excise Tax Regulations define a foundation manager as being an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation).

Although the employees of the bank delegated fiduciary responsibility for administering the trust are ultimately responsible to the board and executive officers of the bank for actions taken with respect to the trust, they are free, on a day-to-day basis, to administer the trust and distribute the funds according to their best judgment and therefore have powers or responsibilities similar to those of trustees of the foundation.

Accordingly, the employees described above are foundation managers within the meaning of section 4946(b)(1) of the Code and, consequently, are disqualified persons with respect to the trust.